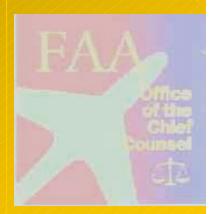
### EEO Mediation Program

#### MEDIATION REFRESHER TRAINING

CENTRAL REGION







Sponsored by ACE
Civil Rights Staff

August 11, 1999

### MEDIATION TECHNIQUES OVERVIEW

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August 4, 1999



# GOAL OF CURRENT EEOC COMPLAINT PROCESSING REGULATIONS

TO PROMOTE GREATER
ADMINISTRATIVE FAIRNESS
IN THE INVESTIGATION AND
CONSIDERATION OF
FEDERAL SECTOR EEO
COMPLAINTS BY CREATING
A PROCESS THAT IS
QUICKER AND MORE
EFFICIENT.



#### **AVOIDING AND RESOLVING CONFLICT**

- First priority to avoid potential claims and litigation by emphasizing proper conduct in policies and training and avoiding even the appearance of impropriety.
- However, mistakes will be made.
  Comments will be misinterpreted.
  Feelings will be hurt and parties will
  turn to lawyers to redress actual or
  perceived wrongs.



### HOW ADR CAN HELP

- ADR SYSTEMS RELY ON PRIVATE MECHANISMS, RATHER THAN THE COURTS, TO RESOLVE A DISPUTE.
- ADR ENCOMPASSES WIDE RANGE OF PROCESSES WHICH ALLOW PARTIES TO TAILOR PROCESS TO CIRCUMSTANCES.
- CAN RESOLVE PROBLEMS WITHOUT "MAKING A FEDERAL CASE" OUT OF EVERY DISAGREEMENT.



# Types of ADR

- INFORMAL DISCUSSIONS
  - **FACT FINDING**
- **NEUTRAL EVALUATION**
- MEDIATION (ASSISTED NEGOTIATION)
- NON BINDING ARBITRATION
- MINITRIAL
- BINDING ARBITRATION



# How Does ADR Work, and Why?

- OPTIONS LIKE MEDIATION CREATE A SAFE ENVIRONMENT FOR OPEN AND DIRECT COMMUNICATION
- PROVIDES MORE FLEXIBILITY AND CONTROL FOR PARTIES
- HELPS PRESERVE RELATIONSHIPS
- PROMOTES PARTNERING
- ENCOURAGES CREATIVE SOLUTIONS
  BASED ON INTERESTS VERSUS
  POSITIONS



# How Does ADR Work, and Why

- WHAT'S WRONG WITH TRADITIONAL
  SYSTEMS FOR RESOLVING CONFLICTS
- INHERENTLY ADVERSARIAL
- LOSS OF CONTROL ONCE ACTION INITIATED
- TRAUMATIC EXPERIENCE FOR MOST
- DAMAGE OR DESTROY RELATIONSHIPS
- COSTLY
- BURDENSOME
  - **LENGTHY**

### OTHER CONSIDERATIONS

- LACK OF PREDICTABILITY OF JUDGE OR JURY DECISION
- OPPORTUNITY FOR BOTH SIDES TO BE HEARD, PARTICULARLY AGGRIEVED
- MAY OPEN LINES OF COMMUNICATION EVEN IF SETTLEMENT IS NOT ACHIEVED



### OTHER CONSIDERATIONS

- LESSON LEARNED MAY KEEP PARTIES
  FROM MAKING SAME MISTAKE
- LITIGATION OFTEN HAS DOWN SIDES FOR BOTH PARTIES
- COMPLICATED RULES MAY PREVENT PARTIES FROM REALLY GETTING AT TRUTH OR BEING ABLE TO EFFECTIVELY TELL THEIR STORY



### GOAL OF ADR SYSTEMS

- RESOLUTION OF DISPUTES
  - FAIR
    - **EFFICIENT**
  - **EFFECTIVE** 
    - TIMELY
- APPLY MOST SIMPLE AND LEAST INTRUSIVE METHOD POSSIBLE UNDER THE CIRCUMSTANCES



### LESSONS LEARNED

- ADR WORKS
- NOT SUITABLE FOR ALL CASES
- CAN BE A VALUABLE TOOL EVEN WHEN IT FAILS TO COMPLETELY RESOLVE ISSUES
- **EFFECTIVE COMMUNICATION KEY**
- TRUST IS IMPORTANT

### **LESSONS LEARNED**

- PERFORM REALISTIC LITIGATION RISK ASSESSMENT
- **KEEP AN OPEN MIND**
- **BE CREATIVE**
- WATCH THE EGO



# GOAL OF TRADITIONAL MÉDIATION PROCESS

TO FACILITATE OPEN DISCUSSIONS
BETWEEN THE DISPUTANTS AND
ASSIST THEM IN REACHING A
MUTUALLY AGREEABLE RESOLUTION.

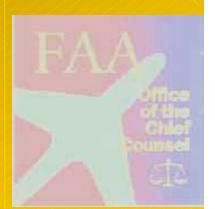


### MEDIATION IN THE WORKPLACE

CHOOSING MEDIATION TO RESOLVE EMPLOYMENT DISCRIMINATION DISPUTES PROMOTES A BETTER WORK ENVIRONMENT, REDUCES COSTS AND WORKS FOR THE EMPLOYER AND THE EMPLOYEE.

### BENEFITS OF MEDIATION

- EFFECTIVENESS: Nationally, in 75% to 90% of mediation cases mediated in a controlled dispute resolution situation, the parties reach an agreement.
- SATISFACTION: Participants report a high degree of satisfaction with the process and the results. The parties maintain control over the outcome.



### COMMUNICATION

MEDIATION PROVIDES A
UNIQUE OPPORTUNITY FOR
THE PARTIES TO
COMMUNICATE DIRECTLY
WITH EACH OTHER.

THIS OPPORTUNITY IS NOT GENERALLY AVAILABLE IN OTHER FORUMS SUCH AS COURTS.



- UNDERSTANDABILITY: Mediators are trained to set the participants at ease, to explain the mediation process, and the mediator's role in the process.
- PRIVACY: With few exceptions, mediation sessions are held in private so that the parties need not air their grievance or complaint in a public setting.

### ROLE OF MEDIATOR

- Serves as neutral facilitator.
- **Builds trust**
- Summarizes, restates, and prioritizes issues in a non-judgmental manner.
- Assists in the generation or clarification of options.
- Evaluates options and possible consequences.
- **Enforces the ground rules.**
- Identifies areas of mutual interest.



- Preliminary Arrangements
- Introductory Statement
- Initial Statements
- Two-Way Exchange
- Issues and Problem Clarification
- Generating Options
- Agreement Writing
- Closure



**Preliminary Arrangements** 

Upon receipt of the case to be mediated, the mediator considers the type of dispute, the relationship of the parties, and who should be included in the mediation.

Informs the parties that they are participating in a structured process.

Coordinates the times, dates, locations, and seating arrangements.



Introduction

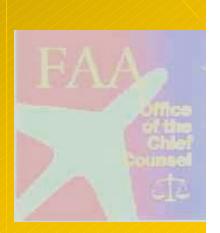
- **ESTABLISHES THE GROUND RULES.**
- **ENCOURAGES NON-ADVERSARIAL APPROACH.**
- **EXPLAINS ROLE AS NEUTRAL, NOT A JUDGE.**
- **EXPLAINS THAT PARTIES RETAIN LEGAL RIGHTS.** 
  - PLACES EMPHASIS ON THE PRESENT vs. PAST.
- **EXPLAINS THE MEDIATION PROCESS.**
- **EXPLAINS THE USE OF A CAUCUS.**
- EXPLAINS THE IMPORTANCE OF CONFIDENTIALITY.
  - **BUILDS TRUST.**



# MEDIATION PROCESS Opening Statements

- Gives each party an opportunity to present their side of the story without interruption.
- Parties encouraged to listen effectively during each other's statement (possibly for the first time).
- Mediator treats each party equally.
- Mediator enforces the "no interruption" rule, and the ground rules in general.





Two Way Exchange

- Allows the parties to express their feelings and emotions to each other in a productive and positive manner.
- Allows the parties to ask and answer questions from each other.
- Fills in information gaps. Gathers data useful to problem resolution.
- Allows the mediator an opportunity to hear the positions of each party and begin to gain insight into underlying issues.



Exploring issues and clarifying

- Allows the parties and the mediator to uncover the motivating interests of each position.
- Helps the parties "frame the issues."
- Uncovers "hidden agenda."
- Assists the parties and the mediator to identify mutual interests on which the parties can bargain or negotiate.
- Allows the mediator to confirm the issues.



# MEDIATION PROCESS Evolutions Ontions

**Exploring Options** 

- Allows the parties to explore solutions which are mutually acceptable.
- Allows the parties to "brainstorm" their own solution rather than by a third party decision maker.
- Allows the parties to retain control over the situation and fosters a feeling of ownership.
- Allows the parties to move away from their original positions and focuses on solutions.



### DESIGNING SOLUTIONS

- IDEALLY, THE SOLUTION SHOULD BE THE PARTIES' SOLUTION.
- TO BE EFFECTIVE IN THE LONGER TERM, RESOLUTIONS SHOULD ADDRESS THE UNDERLYING INTERESTS OF THE PARTIES.
- REMEMBER, UNDERLYING INTERESTS MAY NOT BE STATED; AT LEAST NOT INITIALLY.



### The Caucus

- The caucus, or individual interview, is an optional technique to obtain information about each party's position and for finding areas of compromise.
- The basic purpose of the caucus is to encourage more open communication.
- The caucus can aid in resolving impasses, reducing tension, discussing consequences, and saving face.

Settlement Agreement

- Success in mediation is sometimes intangible (without a written agreement).
- However, when a case is in the EEO process a written agreement is usually necessary.
- Written agreements should be specific: WHO, WHAT, WHEN, WHERE, AND HOW.
- Reality test the written agreement.
- Obtain necessary approvals before finalizing.

Closure with Agreement

- Congratulate the parties for successfully participating in the mediation process and reaching a mutually satisfactory disposition.
- Promote the mediation process as an alternative dispute resolution technique for future issues.
- Encourage the parties to research other alternative dispute resolution methods.



Closure without Agreement

- Compliment the parties for attempting to resolve the dispute through mediation.
- Discuss any positive or constructive results obtained during the mediation.
- Double check the parties' understanding of the consequences of not reaching an agreement.



- MEDIATORS CAN ASSIST OTHERS IN RESOLVING WORKPLACE CONFLICTS BY:
- ASKING EFFECTIVE QUESTIONS
- **CLARIFYING INTERESTS**
- AIDING IN THE DEVELOPMENT OF OPTIONS
- MINIMIZING OR ELIMINATING NON-PRODUCTIVE BEHAVIORS



- **GATHERING INFORMATION**
- Clarifies consequences of no agreement
- Asks for clarification
- Asks open-ended questions
- Summarizes greatest concerns



- **DEVELOPING ISSUES**
- Asks non-threatening questions
- Clarifies interests versus positions
- Asks parties to restate each other's interests



- COMMUNICATION TECHNIQUES
- Listens attentively
- Maintains eye contact
- Uses body language
- Checks for understanding
- Restates or paraphrases accurately
- Allows for silence
- Looks beyond the words
- Draws the speaker out



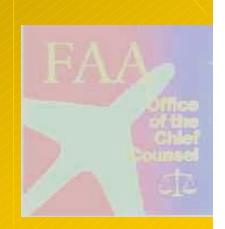
- COMMUNICATION TECHNIQUES
- Barriers to Listening Judging
- Arguing
- Analyzing
- Advising
- Directing
- Labeling
- Moralizing



- COMMUNICATION TECHNIQUES
- **Barriers to Listening**
- Minimizing
- Diverting
- Logical Arguments
- Threatening
- Inappropriate Questioning



- NEGOTIATING AND SOLVING PROBLEMS
- Asks parties to identify criteria to guide resolution
- Asks parties to create multiple options



- INTERVENTION TECHNIQUES
- Uses clear, assertive language
- Maintains neutral behaviors
- Invites equal participation
- Stops session if process is inappropriate



- **CLOSING THE SESSION**
- Checks that all issues are addressed
- Clarifies degree of resolution
- Obtains agreement on next steps
- Acknowledges and thanks parties



- YOUR ROLE IS TO CREATE
  OPPORTUNITIES FOR RESOLUTION
  TO OCCUR
- ULTIMATELY WE HOPE TO ADD
  MEDIATION TECHNIQUES TO
  EVERYONE'S TOOLBOX OF SKILLS
  FOR HELPING TO RESOLVE
  CONFLICTS



### GAINING BUY IN

IF AGENCY POWER POINTS
UNDERSTAND THE BENEFITS OF ADR
TECHNIQUES, THEY ARE MORE LIKELY
TO BUY IN TO THE PROCESS.

AT THE VERY LEAST YOU MAY IMPROVE COMMUNICATIONS AND UNDERSTANDING OF UNDERLYING INTERESTS. THIS CAN FACILITATE RESOLUTIONS AND IMPROVE WORKING RELATIONSHIPS.

